IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 253 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMLAL KANTILAL PATEL - Applicant(s)
Versus
DUPADBHAI KIKABHAI THAKORE (DHRUPAD KIKABHAI THAKORE) - Opponent(s)

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Appearance :
MR UDAY R BHATT for Applicant(s) : 1,
MS BANNA S DUTTA for Opponent(s) : 1,
MR ATIT D THAKORE for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 12/10/2006

ORAL JUDGMENT

1. This revision application under Section 29(2) of the Bombay Rents Hotel and Lodging House Rates Control, Act,

1947 (the Act) challenges the Judgment and Order dated 11.08.2006 made by the appellate Court in Civil Appeal No.195 of 2000 partly confirming the Judgment and decree made by the trial Court on 11.08.2000 in HRP Suit No.2334 of 1990. The applicant herein is the original tenant while the respondent is the plaintiff. Hereinafter, the parties shall be referred to as per their respective description in the suit for the sake of convenience.

2. The plaintiff is the owner of the premises bearing No. M.C. No.1147/1 and Survey No.2717/1. The defendant is the tenant for a monthly rent of Rs.150/- and as per the agreement between the parties both municipal tax and education cess are to be borne by the tenant. Admittedly, the suit premises had been let out for business purposes. The defendant had been irregular in payment of rent and though the rent was paid upto 31st March, 1985, with effect from 1st April, 1985 the rent was due from the defendant. The plaintiff further averred that the suit premises were kept closed, the defendant was not using the same, the defendant was residing at Bombay and serving over there. The present suit namely HRP No.2334/1990 came to be filed after serving a notice on the defendant-tenant by the plaintiff. The case of the

defendant is that the defendant had sent rent by two money orders after 01.04.1985 but the same were returned unserved with endorsement that “the landlord Kikabhai has expired”. That the defendant was always ready and willing to pay the rent. Further contention raised by the defendant was that a sum of Rs.25,632/- towards repairs and renovation of the suit premises had been incurred by the defendant and the said amount was required to be adjusted towards rent due. According to the defendant, therefore, the suit was liable to be dismissed.

3. The trial Court came to the conclusion that the plaintiff had prayed that the defendant was in arrears of rent for more than six months; that the defendant was not using the suit premises continuously for more than six months immediately preceding the date of filing of the suit and that defendant was not ready and willing to pay the rent. The trial Court also came to the conclusion that the plaintiff was entitled to get Rs.150/- as mesne profits from the date of the suit till the possession of the suit premises from the defendant. The trial Court also held that the plaintiff was entitled to get vacant and peaceful possession of the suit premises from the defendant-tenant.

4. The defendant-tenant carried the matter in appeal. After hearing the parties the appellate Court came to the conclusion that the trial Court had rightly held that the defendant-tenant was in arrears of rent for more than six months and was not ready and willing to pay the rent. However, the appellate Court also held that the trial Court had committed an error in holding that the suit premises had not been used for a continuous period of six months by the defendant-tenant, immediately preceding the date of filing of the suit. Therefore, the appellate Court came to the conclusion that the decree passed by the trial Court on the ground of violation of the provisions of Section 12(3)(b) of the Act was correct and the defendant-tenant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff-landlord on or before 31st October, 2006.

5. The defendant tenant has challenged the aforesaid order made by the appellate Court. Mr.Uday R. Bhatt, learned advocate for the defendant has assailed the Judgment of the appellate Court on the ground that the defendant-tenant was always ready and willing to pay the rent and both the lower Courts had erred in holding otherwise. That provisions of Section 12(3)(b) of the Act had wrongly been read and applied

to the facts of the case despite the fact that the term "regularly" had been deleted by Gujarat Act No.7 of 1985. That, therefore, admittedly at the point of time when the dispute was brought before the Court, the requirement of making payment/deposit regularly was not warranted and therefore, in case there was any default the same was not to be considered so as to hold that pre-requisite conditions of Section 12(3)(b) of the Act stand fulfilled. He placed reliance on Apex Court decision in case of *Mohan Laxman Hede V/s.Noormohamed Adam Shaikh, AIR 1988 SC 1111* in support of proposition and emphasised that the expression "regularly" did not mean with exact or mathematical punctuality; that the said decision had been rendered before the deletion of the term regularly and hence the case of the defendant-tenant was on a better footing when amended provisions were to be taken into consideration. In other words, according to him, no regular payment or deposit is envisaged but if any minor lapse was there the same had not to be considered with mathematical precision. In this connection, he has also placed reliance on decision of this Court in case of *Bai Sakarbai Devraj V/s.Ibraham Abdul Ganibhai Pankhida, Volume 35(2) 1994 GLR 1091 and Rajkamal Enterprise V/s. Manubhai Bhikhubhai Mistry, Volume 38(1) 1997 GLR 848.*

6. Another limb of contention was that on the date of Judgment there were no arrears of rent and hence the Court could not have passed any decree of eviction considering the fact that there was compliance with the order made under Section 11(4) of the Act, even if the compliance was belated to a certain extent. That even if no extension of period for depositing the arrears of rent had been claimed the court can always exercise *suo moto* powers in this regard as otherwise the provision which is made for the protection of a tenant would be rendered illusory. In support of this proposition, he has placed reliance on following three decisions of this Court:

(1)Harnamsing Lalsing V/s.Gangaram Itchharam, 1968 (9) GLR 323.

(2)Nanji Pancha V/s.Daulal Naraindas , 1970 (II) GLR 285

(3)Shardaben M.Patel V/s.Ranjitlal Manuskhlal, 2002(I) GCD 552

He therefore urged that in the facts of the present case both the lower Courts had committed an error in coming to the conclusion that the defendant-tenant had failed to comply with the requirements of Section 12(3)(b) of the Act.

7. Another contention that was raised was that the defendant-tenant had incurred expenses to the tune of Rs.25,632/- towards repairs and renovation of the suit premises and the defendant-tenant was entitled to adjustment thereof towards rent payable and, further contention was raised that the defendant-tenant was not in India when the suit went to trial and deposition of power of attorney had been recorded which was not permissible in law. Therefore, according to him, the impugned order was required to be quashed and set aside holding that the decree of eviction made by the trial Court and confirmed by the appellate Court was bad in law.

8. In so far as contention regarding repairs is concerned suffice is to state that the appellate Court has found that in the earlier suit between the parties which came to be decided on 06.03.1996, certified copy of which is available at Exh.53 on record, it has been found as a matter of fact that nothing is required to be paid in this regard and the issue already stands concluded in the earlier suit. Therefore, the same cannot be treated to be a relevant factor.

9. The facts are not in dispute. Admittedly, the defendant-tenant was in arrears on and from 01.04.1985. The statutory notice dated 30.08.1988 was served. That despite service of the notice the defendant-tenant had raised various issues but had defaulted in making payment. It is an admitted position that even when the suit was filed and went to trial no payment had been made. The defendant-tenant had not made payment in time, nor disputed the rent payable, no dispute with regard to the amount agreed between the parties that the same was not the standard rent, had ever been raised. Therefore, the plaintiff moved application Exh.20 under Provisions of Section 11(4) of the Act and an order came to be made by the trial Court directing the defendant-tenant to deposit a sum of Rs.18,600/- on or before 31st January, 1999. The said order remained in operation in absence of any challenge but was not complied with. The issues have been framed vide Exh.42 on 12.02.1999. The defendant-tenant filed a pursis Exh.43 on 16.03.1999. whereby according to him, a total amount of Rs.21,700/- had been deposited on different dates in the trial Court. The appellate Court has found, as a matter of fact, from the pursis filed by the defendant himself that on or before 12.02.1999, namely the first date of hearing when the issues came to be framed, the tenant had deposited

only a sum of Rs.2,700/- in the Court and thus had failed to comply with the order made by the trial Court under Section 11(4) of the Act. That rest of the amount had been deposited subsequent to the first date of hearing, namely 12.02.1999.

10. It is in backdrop of such facts that the contention raised on behalf of defendant-tenant is required to be appreciated. Admittedly, the defendant-tenant had not moved the trial Court for fixing any other date, namely, other than the first day of hearing of the suit. Therefore, the question whether the defendant-tenant can claim as a matter of right whether provisions of Section 12(3)(b) of the Act are not applicable so as to pass a decree of eviction, or are applicable so as to give protection to the tenant.

11. Section 11 of the Act pertains to the powers available to the Court for fixing standard rent and permitted increases. In sub-section (4) of Section 11 of the Act, it is provided that in a case where the suit is for the recovery of the rent, with or without possession, at any stage, if the Court is satisfied that the tenant is withholding the rent on the ground that rent is excessive and standard rent should be

fixed the Court is empowered to make an order directing tenant to deposit in Court forthwith such amount of rent as the Court considers to be reasonably due to the landlord. However, in a case where no such dispute is raised by the tenant i.e. that the rent is excessive and standard rent should be fixed, if it appears to the Court that it is just and proper to make such an order, the Court may make an order directing the tenant to deposit the amount of rent which the Court finds as being reasonably due to the landlord. The provision also envisages the powers of the Court to fix the time frame and issue directions in this regard to the tenant.

12. In the present case, the tenant did not seek any orders but the landlord called upon the trial Court to pass an order directing the tenant to deposit the amount of rent which according to the Court was reasonably due to the landlord. As recorded hereinbefore, the trial Court, therefore, made an order directing deposit of Rs.18,600/- on or before 31st January, 1999. This order had attained finality in absence of any challenge and the defendant-tenant was bound to comply with the directions of the Court, no contention to the contrary can be countenanced. Once there is an order of the Court, the party is bound by the same and compliance is a necessity. In

the event, the party against whom directions have been made is aggrieved by such direction or the order, the same must be challenged in appropriate proceedings before appropriate forum, or if the terms of the directions are required to be modified the Court making the order must be moved in this direction. The party cannot be heard to say that it will not avail of any remedy under the law and yet should be permitted to act in defiance of a valid order made by the Court in exercise of statutory powers vested in the Court. All contentions based on the niceties of law have no place once a valid order is in existence or operation.

13. It is irrelevant whether the order is complied with at a subsequent point of time or not. The defendant against whom the order had been made and directions issued was bound to comply with the order made by the Court if the defendant wished to avail the umbrella of statutory protection. He cannot be heard to say that merely because the expression 'regularly' stands deleted from the statute, he will not comply with the directions made by the Court. A person who is not ready and willing to comply and abide by an order made by the Court in accordance with law cannot seek to invoke equity in favour on the ground of so called substantial compliance. In

the present case, admittedly, as concurrently found by both the lower Courts, there was no substantial compliance. Against the order of deposit of Rs.18,600/- by 31st January, 1999 (even if the same is read as 12.02.1999), it has been found by the Courts that only a sum of Rs.2,700/- had been deposited. In such an eventuality the defendant-tenant cannot be permitted to contend that there was substantial compliance with the order. Even otherwise, once the Court has by a valid order laid down a particular date for compliance, in absence of any modification or extension of the date, a party is duty bound to adhere to the time frame. Assuming that the party is prevented from complying with the order due to unavoidable circumstances, the party is required to approach the Court making the order at the first available opportunity seeking extension/modification of the terms stipulated by the Court. The party cannot just sit tight over the order without abiding by the order and yet claim that the Court must post facto ratify the default and subsequent acts considering the same as substantial compliance.

13. There is one more aspect of the matter, Section 12(3)(b) of the Act entitles a party against whom the order is made to have such other date fixed by the Court during which

deposit should be made. If for any reason, the defendant-tenant was not in a position to comply with the order made by the Court the defendant-tenant could have approached the Court and sought extension of time. It is an admitted fact that no such extension had been prayed for. In the circumstances, the contention that the Court itself should have exercised *suo moto* powers so as to permit the defendant-tenant to escape the rigors of law is not only misplaced but unwarranted. The judgments on which reliance has been placed in this regard have been categorically delivered in the context of the fact that the Court itself had not fixed the standard rent, despite an application pending before it, till the point of time the final Judgment was delivered. It was in this contextual backdrop that the Courts have held that in the circumstances a party cannot be expected to do something impossible, namely deposit the amount which is not even fixed till the final judgment is delivered. At the cost of repetition, it is required to be recorded that the facts in the present case are otherwise.

15. In the aforesaid set of facts and circumstances, it is not possible to find any infirmity in the concurrent findings recorded by both the lower Courts. It is also required to be

noted that when a Court is called upon to balance competing interests overall conduct of the parties seeking equity and justice from the Court also has to be borne in mind. The plaintiff, who is landlord, cannot be treated at a discount on the so called ground of sympathy to be shown to the defendant-tenant who brazenly does not comply with a valid order made by the Court and yet seeks that the Court itself exercise the discretion in his favour.

16. In the result, this revision application does not merit acceptance and is, accordingly, summarily rejected.

17. At this stage, the learned advocate for the defendant-tenant prays for extension of time to vacate the premises during which the defendant-tenant may want to move the Apex Court against this Judgment and order. In light of the facts which have come on record the prayer is rejected.

(D.A.MEHTA, J.)

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